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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/425,743	10/22/1999	ED VAES	300P4	9958

7590 06/20/2003  
MARK A KOCH  
866 MAIN STREET EAST  
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CANADA

EXAMINER

GRAHAM, GARY K

ART UNIT PAPER NUMBER

1744

DATE MAILED: 06/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/425,743

Applicant(s)

VAES, ED

Examiner

Gary K Graham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 40-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1 April 2003 has been entered.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 41-46, 48-52 and 54-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 41-46 depend from claim 1 which has been cancelled. Such is improper.

Claims cannot depend from cancelled claims. The claims will be treated as though they depend from claim 40.

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Claims 48-52 depend from claim 8 which has been cancelled. Such is improper. Claims cannot depend from cancelled claims. The claims will be treated as though they depend from claim 47.

In claim 53, line 11, there is no antecedent basis for "the handle axis".

Claims 54-57 depend from claim 14 which has been cancelled. Such is improper. Claims cannot depend from cancelled claims. The claims will be treated as though they depend from claim 53.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 40, 41 and 44-49 are rejected under 35 U.S.C. 102(b) as being anticipated by Ernest et al '437.

The patent to Ernest discloses the invention as is claimed. Note handle (10) which has three distinct portions. At least one side of the head section is flat, thus being substantially planar. Also, note that the brush of Ernest could be used in any manner so desired, including as a paintbrush.

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With respect to claim 47, note that brush head (48) of Ernest is "relatively" flat. Also note that handle sections and head sections of the handle lie in different yet parallel planes (fig. 1A, 1D).

With respect to claims 40 and 49, a brush edge can be selected on the head section that is substantially parallel to "a" handle plane. Note that the head section has numerous edges (see figure 1B).

With respect to claims 44 and 45, note that any plane can be set forth as the brush plane. A plane so selected would be substantially parallel to the longer elliptical/oblong portion shown for the handle section (fig. 1C).

Claims 47, 50, 51 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Lynde '251.

The patent to Lynde discloses the invention as is claimed. Note figures 1 and 2 which show a paintbrush with a handle which includes a handle section supporting a head section via a transition section. Both the head section and the transition section flare away from the handle section. Note that the head section and handle section lie in different planes (fig. 2).

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 52-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lynde '251 in view of Harrison '063.

The patent to Lynde discloses all of the above recited subject matter, including a brush plane of the flattened head section lying in a different plane than a longitudinal handle axis.

Note that Lynde does appear to show a casing attaching the bristles to the handle.

The patent to Lynde discloses all of the above recited subject matter with the exception of the casing being of metal and the handle being flattened having a somewhat oblong cross section.

The patent to Harrison discloses a paint brush wherein the handle (14) is flattened (see fig.1) such that a transverse cross section would be oblong in shape and the casing (12) is made of metal.

It would have been obvious to one of skill in the art to flatten the handle of Lynde and to make the casing of metal, as clearly suggested by Harrison, to provide a comfortable to grip handle and to provide a high strength casing. Both of the above features are well known in the paint brush field.

With respect to claim 57, note that a cross section of the modified handle of Lynde could be selected such that the longer oblong section would be substantially parallel to the brush plane.

#### *Response to Arguments*

Applicant's arguments filed 1 April 2003 have been fully considered but they are not persuasive. In view of the above rejections and remarks, applicant's arguments are not persuasive. As stated above, the head section of Ernest is considered to be planar since it has a flat side. Also, as stated above, the head section has multiple edges, any one of which can be considered to be a "brush" edge parallel to the handle plane. As set forth above, the patent to Lynde discloses a flared head section. Also, the patent to Harrison discloses a handle with an oblong cross section.

#### *Allowable Subject Matter*

It appears that claims 42 and 43 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K Graham whose telephone number is 703-308-1270. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 703-308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Gary K Graham  
Primary Examiner  
Art Unit 1744

GKG  
June 16, 2003